

# The Nursing Home OMBUDSMAN

THE NURSING HOME OMBUDSMAN Demonstration Program (NHODP) is part of the Nursing Home Improvement Program of the Department of Health, Education, and Welfare. NHODP's mission is to demonstrate and test various approaches that may provide consumers of nursing home care—patients, as well as their relatives and friends—with an effective voice in determining care practices in nursing homes.

## **Background and Development**

The ombudsman program has its roots in President Nixon's August 1971 address in Nashua,

N.H., on Nursing Home Initiatives, in which he charged HEW with developing and sponsoring programs that would help to upgrade the quality of care and of life in the nation's nursing homes. One area targeted for improvement was the subjection of some patients to physical and mental abuse, poor or inadequate treatment, and the loss of personal or property rights; such patients have little, if any, easily available and effective recourse for the redress of these grievances. One mandate to HEW was "to assist the States in establishing investigative units which will respond in a responsible and constructive way to complaints

# Demonstration Program

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made by or on behalf of individual patients (in nursing homes).”

The responsibility for planning the implementation of this charge went to an interagency Task Force on Investigative-Ombudsman Units that included representatives of HEW agencies, the Veterans Administration, and the Office of Economic Opportunity. The task force found several reasons for the inadequate protection of patients' rights in nursing homes. Among these reasons were confusion and complexity in the enforcement of regulations at the State level and the failure of professional and voluntary groups to

achieve an impact on the quality of care. The task force concluded that fundamental changes would be required to guarantee “humanization of facilities”—changes not only within the nursing home industry, but also in the enforcement of standards and in access to social and community services.

The basic concept underlying all the approaches being tested in the demonstration program is the classic legislatively based ombudsman, who is an independent, highly placed official in national, State, or local government appointed by and responsible to the legislature. The ombudsman's

basic function is to investigate and resolve citizen grievances against government agencies or officials. The purpose of ombudsman activity is to oversee and to improve government administration.

The task force drew on the experiences of a number of countries which use the ombudsman mechanism, as well as a small number of U.S. States and local jurisdictions in which ombudsmen have recently begun to function. There are some obvious similarities between the nursing home ombudsmen and the classic (governmental) ombudsmen, for example (a) maintaining independence and objectivity of function, (b) helping people with grievances to use a complex system of care and services, and (c) attempting to insure that the system works.

Even more interesting than the similarities are some of the unusual aspects resulting from the application of the ombudsman approach to nursing home consumers. The following aspects are essential to an understanding of the duties of the nursing home ombudsmen and the commitment they give to those duties. First, the nursing home ombudsmen have no legislated jurisdictional authority. While classic ombudsmen operate under the authority of enabling statutes with subpoena power and privileged communication, the nursing home ombudsmen use cooperative relationships and the authority of others to investigate and resolve complaints. Second, the nursing home ombudsmen deal primarily with private enterprise (proprietary nursing homes) and voluntary organizations, as well as with professional groups and government agencies. Third, the nursing home ombudsmen operate in an area in which resources and administration are inadequate, and thus there is a need for improvement and change in the system.

The nursing home ombudsmen, then, have two major operating tasks: (a) to establish effective and viable mechanisms for receipt and resolution of complaints and (b) to document significant problems in the system of long-term care and, in turn, to stimulate improvement of that system.

Because the application of the ombudsman principle in the nursing home field is a new experience, the task force recommended demonstration and evaluation to determine the effectiveness and appropriateness of various approaches to the demonstration program. The major distinction between approaches concerned the auspices under

which the demonstrations would be conducted, that is, State government or a voluntary organization of senior citizens.

The task force also recommended testing a legislatively based ombudsman model, but a site could not be found for this alternative. Guidelines for proposals to implement each of the models were prepared, and all State Governors and many national voluntary organizations were requested to indicate their interest in submitting proposals. The proposals submitted were evaluated by members of the task force. The major technical criteria used were the adequacy of the plan to implement the project and the ability of the project to operate objectively and independently.

In demonstrating and testing various approaches, we are attempting to examine a range of variables, such as auspices (government versus voluntary), organizational locations, employed staff (background, training), use of volunteers, and techniques of problem definition and resolution. It is necessary to learn which combination of these variables and other factors work well together in relation to the characteristics of the settings in which they are located.

### **State Projects**

On June 30, 1972, five contracts were awarded for the establishment of Nursing Home Ombudsman Demonstration Projects. Four of the contracts were with State governments to establish a State-level office linked to a local-level unit. The States were Idaho, Pennsylvania, South Carolina, and Wisconsin. To permit independence and objectivity, the projects were placed in agencies not responsible for the regulation of, or services to, nursing homes.

The local-level units receive complaints made by or on behalf of nursing home patients, investigate these complaints, and then attempt to resolve them. The State-level units supervise the operation of the local units, assist them in resolving complaints by involving appropriate State agencies, and respond to complaints that originate outside the local demonstration areas. The State units are also responsible for followup to assure that corrective action is taken and that all complainants are notified of the outcome.

The State units are staffed by professionals with legal, social work, health, administrative, or other appropriate backgrounds. The local units have professional direction but use volunteers as well

as paid staff. In Pennsylvania, the Philadelphia local unit is operated by a voluntary organization that is funded by a State grant; this arrangement also holds in Massachusetts (project started in 1973).

Idaho's nursing home ombudsman is located in the State's department of special services and through this agency is responsible to the Governor. The ombudsman unit, based in Boise, has concentrated its first year's activities in the seven-county Treasure Valley area of southwestern Idaho. This area contains 15 of the State's 56 nursing homes. The unit is linked to an advisory committee composed of nursing home consumers, providers, and representatives of State agencies. Volunteers, recruited from local organizations and trained and supervised by the ombudsman staff, participate in the project as outreach visitors to nursing home patients. The project is currently planning an expansion of ombudsman services to another portion of the State.

Pennsylvania's State ombudsman is located in the Governor's Office of Human Resources and receives input from an advisory committee representing consumers, professional groups, and the nursing home industry. The local Philadelphia ombudsman unit is operated by the Nursing Home Campaign Committee, Inc., and uses community volunteers to receive and resolve complaints. A local unit in Alleghany County (Pittsburgh) has a small, paid staff and is directed by the State ombudsman.

The State ombudsman unit in South Carolina is placed in the Commission on Aging, an independent agency directly responsible to the Governor. A regional unit serves the Central Midlands Regional Planning District (Columbia), while the State unit responds to complaints from other areas. Volunteers will be trained to work at both State and regional levels in an outreach capacity.

The Office of the Lieutenant Governor in Wisconsin had been investigating nursing home care for a year and had handled 400 complaints before the project was developed. It now operates the State Nursing Home Ombudsman Program and has a local unit in Milwaukee. The State unit staff of four investigators responds to complaints from any area of the State except Milwaukee.

Contracts for the four initial State Nursing Home Ombudsman Demonstration Projects have been extended for a second year of operations. In addition, two new State projects were started

in July 1973 in Massachusetts and Oregon to demonstrate the impact of other unique organizational locations.

In Massachusetts, the State nursing home ombudsman is located in the Office of the Secretary of Elder Affairs, who is a member of the Governor's cabinet and is charged by legislation to be the State's advocate for the aging. Such a legislative mandate makes the location of this demonstration unique. The unit is staffed by two professionals and is linked to a local unit of senior-citizen volunteers in the Holyoke-Chicopee area.

In Oregon, the nursing home ombudsman unit is in the office of the general State ombudsman. An assistant ombudsman for nursing home affairs will respond to complaints of patients or families by using the status, authority, and grievance expertise of an ombudsman office that has functioned for the past 3 years.

### **Voluntary Project**

The one project conducted under the auspices of a national voluntary organization of senior citizens is now in its second year of operation. The National Council of Senior Citizens has organized a system consisting of a national-level nursing home ombudsman office linked to a State-level and two local-level units in Michigan. The national unit in Washington, D.C., works with Federal agencies and national organizations in articulating national-level problems regarding nursing homes and in advocating their resolutions. The State-level unit, in Lansing, Mich., works with State agencies and consumer groups toward initiation of nursing home reform. It is linked to local units in Detroit and to the rural Upper Peninsula of Michigan. These units rely heavily on senior-citizen volunteers, trained and supervised by local unit directors, to visit nursing homes regularly and to resolve patients' problems.

### **Concepts**

Three major concepts are currently being demonstrated in the Nursing Home Ombudsman Demonstration Program. One concept is that investigative units operating at State and local levels can effectively receive, investigate, and resolve complaints made by or on behalf of individual nursing home patients. This concept requires that the ombudsman work directly with patients, providers, communities, and existing service and

regulatory agencies so that they gain understanding, provide needed services and benefits, and modify administrative procedures. In short, the ombudsman must validate individual complaints and work within the system to bring about the changes needed to resolve the complaints.

An example of this activity occurred in Idaho when the ombudsman received multiple complaints from a nursing home patient about the quality of food in the home, the lack of recreational activities, and the general feeling that he had no control over his life. The ombudsman staff, in coordination with the State health department and the department of social services, investigated the complaints, and steps were taken by the home to provide more individualized attention to the patient's diet. In addition, the social worker of the department of social services involved the patient in a foster grandparent program. He is now visiting an institutionalized mentally retarded child.

The second major approach in the demonstration requires the ombudsman to document significant problems affecting a large amount of the nursing home population and to work toward resolving these problems. In South Carolina, the ombudsman, through a number of individual complaints received, found that the administration of the State's Medicaid program denied nursing home patients the right to make 1- or 2-day visits to friends and relatives in the community. Such visits would help some patients maintain important community ties and might lead to their eventual discharge from the nursing home. After the ombudsman and his advisory committee brought this problem to the attention of the head of the Medicaid agency, the policy was modified to permit such visits when medically appropriate.

The third major concept being tested in the demonstration program is the use of volunteers to increase community involvement in defining and resolving problems of nursing home patients. An excellent example of this is occurring in the Michigan project, conducted by the National Council of Senior Citizens.

### **The First Year of Operation**

Much of the first year of each demonstration project has been devoted to mastering some developmental tasks. Although projects approached the tasks differently and developed at different rates, the following steps were taken by all.

*Recruitment and training of staff.* The professional backgrounds and expertise of the staff employed by the projects vary. Social workers, public health nurses, nursing home administrators, government administrators, and attorneys have been used. These professionals had to learn about standards and regulations governing nursing home operations, technical issues relating to care provided, and a host of social welfare services that comprise the long-term care system. Much of this training and orientation has been conducted "on the job," especially with the help of regulatory and service agency personnel and expert consultants.

The projects which use community volunteers have developed training programs geared to preparing citizens for outreach work in nursing homes.

*Establishment of operating policies and procedures.* Each project has developed approaches to receiving, investigating, and resolving complaints. Complaints may be received by telephone, mail, office visits, or direct outreach by ombudsman staff. Receipt of a complaint is acknowledged, and an investigation is undertaken to determine whether the complaint is valid. At this point, the ombudsman must determine if the complaint can be resolved and take steps toward that resolution. Often, complaints are resolved as a result of discussions with the parties involved. Sometimes complaints need to be referred to regulatory or service agencies. At other times, no resolution is readily available.

*Development of linkages and working relationships with regulatory and service agencies and community groups.* In the ombudsman's role of "overseer" of the system of long-term care, he must (a) define the elements of that system in terms of responsibilities and capabilities and (b) motivate people to respond to unmet needs. Although the elements of that system vary from one area to another, all of the projects have had to deal extensively with State and local departments of health and social services and with Federal regulatory agencies for the referral of code violations and service gaps. Other important linkages have been formed with provider groups, organizations of health professionals, information and referral services, citizen groups, and hospital discharge planners.

In addition to cooperative work on individual cases, many of the groups and agencies mentioned are represented on the advisory committees of

each of the ombudsman projects. This has resulted in improved communication and coordination among elements of the long-term care system.

*Publicizing the availability and purpose of the nursing home ombudsman service.* The projects have been experimenting with various approaches to informing nursing home consumers of their existence. Media campaigns include the development and use of public service spot announcements on radio and television, newspaper ads, press releases, brochures, and posters. In addition, most of the ombudsmen have been called upon for speaking engagements at community and professional meetings.

Perhaps the most meaningful sources of publicity are in the outreach approach of ombudsman staff and volunteers to patients in nursing homes and in word-of-mouth reports of clients, providers, and agency staff who have had satisfactory contacts with the projects.

*Investigation and resolution of complaints.* The essence of the ombudsman's purpose is to respond to grievances or problems of individual patients in nursing homes. Not all of the projects reached full operating capability at the same time during the first year, but all have at least begun to work on complaints.

It is premature to analyze fully the number and types of complaints received and methods of resolution. However, some interesting patterns have begun to emerge:

—During the first year of partial operations, the five demonstration projects received a total of 1,196 individual complaints from 713 complainants. Most cases involved more than one complaint or problem.

—Most of the complaints were made by a friend or relative in behalf of a patient.

—In each of the projects, between 50 and 60 percent of the complaints were concerned with the quality of care provided in the home, with the rules and regulations or administrative policies of the home, and with payment for care. Contrary to popular expectations, a relatively small number of complaints were about food (7 percent).

—More than 80 percent of the complaints or problems were verified or justified; that is, in the judgment of the ombudsmen and their consultants, the reported incidents or problems reflected complaints that could or should be corrected.

—The projects averaged 55 to 60 percent success in resolving complaints. Because most complaints were concerned with conditions or practices in nursing homes, resolution frequently involved a consensus approach, that is, discussing the matter with the patient, relative, staff, and administrator to arrive at a satisfactory solution. The next most common approach was referral of the problem to a regulatory agency (if standards or codes were violated) or a service agency (if the concern was with a gap in services). A key factor here is that the ombudsman followed up to see that the referral was acted upon and to insure that the resolution was still in effect.

*Documenting and stimulating resolution of significant problems in the long-term care system.* Although the projects were not fully operational for the whole year, personnel quickly became aware of some of the broad problems existing in nursing homes.

## **Emerging Issues and the Second Year**

Based upon patterns that have emerged from cases investigated by the ombudsmen and upon special studies conducted by the projects and their advisory groups, a number of significant and broad problem areas were pinpointed for action in the second year of the demonstrations. The following items are a sample of the issues to be addressed: overuse of tranquilizers, lack of community ties, inadequate physician care, inappropriate placement of patients, life-care contracts, lack of coordination of standards, excessive charges, lack of alternatives to institutional long-term care, and need for training of nursing home staff.

Evaluation of the demonstrations is an integral part of the program. Assessment of the impact of location and auspice of the projects, modes of operation, differential use of staff, and linkages with agencies and community groups will provide valuable information for other States or organizations planning to provide similar services.

The impact of the projects' individual grievance mechanisms and broader reform activities on services and resources available to patients, on the regulatory process, and on recognition and safeguarding of patients' rights will indicate whether a nursing home ombudsman program will enhance the quality of care and the quality of life in nursing homes.